



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1276/3 4

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Wanted by Wed 1/28 - Ann

DOA:.....Thornton, BB0316 - State building construction procedures

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: state building construction procedures.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE BUILDING PROGRAM

This bill makes various changes in state building construction procedures.

Currently, with certain exceptions, no state board, agency, officer, department, commission, or body corporate may enter into a construction contract for any state building, structure, or facility if the project involves an estimated cost of more than \$150,000, without review and approval of the project by the Building Commission. This bill changes this requirement to apply only to projects having an estimated cost of more than \$250,000.

Currently, with certain exceptions, the Building Commission is prohibited from authorizing the design, construction, repair, remodeling, or improvement of any state building, structure, or facility, or the acquisition of land for that purpose, for any project costing more than \$500,000, regardless of funding source, unless the project is enumerated by law in the Authorized State Building Program. This bill provides that this enumeration requirement does not apply to any proposed project that is funded entirely with federal funds or gifts, grants, or bequests.

Currently, with certain exceptions, contracts for construction work on state construction projects that cost more than \$40,000 must be let by contract to the lowest responsible bidder and must be preceded by public notice and a public bidding process. Wisconsin-based bidders are accorded a preference over bidders whose

home governments grant them a preference in making governmental purchases. DOA must attempt to ensure that 5 percent of the total amount expended for construction work in each fiscal year is awarded to minority-owned businesses. With certain exceptions, DOA must take separate bids on each portion of the work that DOA designates. Contractors must be granted certain progress payments while a project is underway. This bill permits the secretary of the Building Commission to waive any of these requirements for any project the cost of which is less than \$5,000,000.

Currently, with certain exceptions, contracts for work to be performed on projects that require review and approval by the Building Commission must be let by bid preceded by public notice and must be awarded to the lowest responsible bidder, and are subject to minority-owned business participation goals and certain other requirements. This bill applies these requirements only to projects having an estimated cost of \$500,000 or more.

Currently, with certain exceptions, if a project has an estimated cost of more than \$40,000, contracts for work to be performed on the project must be let by sealed bid preceded by public notice which must contain specified information and the bids must be opened publicly and must include a bid guarantee. This bill retains the requirement for letting these contracts to the lowest responsible bidder, but applies other specific bidding requirements only to a project that has an estimated cost of more than \$100,000.

Currently, when DOA believes that it is in the best interests of the state to contract for certain proprietary articles or materials available from only one source, it may contract for the articles or materials without solicitation of bids or compliance with other statutory requirements after publishing a single notice of its intention to let the contract in the official state newspaper. This bill modifies this procedure to apply to specified proprietary articles or materials regardless of whether they are obtainable from only one source, but requires solicitation of bids when the procedure is used.

Currently, with certain exceptions, a bidder on a contract for a state project need not submit with its bid a list of the subcontractors to be used on the project, but DOA may require a list of the subcontractors to be submitted before the contract is awarded. This bill permits DOA to require each bidder on a state project to submit with its bid a list of its subcontractors to be used on the project.

Currently, with certain exceptions, if a contract for a state project or a change order to such a contract involves an expenditure of more than \$60,000, the contract is subject to the governor's approval, but the governor may delegate his or her authority to approve a contract or change order involving an expenditure of less than \$150,000 to the secretary of administration or the secretary's designee. This bill permits the governor to delegate his or her authority to approve a contract or change order involving an expenditure of any amount to the secretary of administration or the secretary's designee.

Currently, with certain exceptions, DOA has the responsibility to take charge of and supervise all engineering and architectural services for state projects. This bill provides that, with certain exceptions, for the purpose of selection of an

appropriate engineer or architect for each state project, DOA shall appoint one or more selection committees. The bill also requires that for each project having an estimated cost of \$5,000,000 or more, the selection committee shall interview each candidate for appointment as an engineer or architect, except that the secretary of administration or the secretary to the Building Commission may waive this requirement when he or she determines that is in the best interests of the state to do so.

Currently, the governor, upon approval of the Building Commission, must authorize expenditure of moneys for planning and design of state building projects. The governor may transfer moneys from the appropriation in the state building trust fund for planning and design to other appropriations in the building trust fund. This bill directs the Building Commission to authorize expenditure of moneys for planning and design of state building projects. The bill also permits the ~~secretary of administration, instead of the governor,~~ to transfer moneys from the appropriation in the building trust fund for planning and design of state building projects to other appropriations in the building trust fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.48 (2) (a) of the statutes is amended to read:

2 13.48 (2) (a) There is created a building commission consisting of the governor,
3 who shall serve as chairperson, and 3 senators and 3 representatives to the assembly
4 appointed as are the members of standing committees in their respective houses.
5 The 2 major political parties shall be represented in the membership from each
6 house. One legislator from each house shall be a member of the state supported
7 programs study and advisory committee created by s. 13.47. One citizen member
8 shall be appointed by the governor to serve at the governor's pleasure. The secretary,
9 head of the engineering function, and ranking architect of the department of
10 administration shall be nonvoting advisory members. The secretary of
11 administration shall designate an employee of the department of administration to
12 serve as secretary to the building commission. The building commission shall bear

1 a title beginning with the words "State of Wisconsin". The members shall be liable
2 only for misconduct. Nonlegislator members of the building commission shall be
3 reimbursed for actual and necessary expenses, incurred as members of the building
4 commission, from the appropriation under s. 20.505.

5 **SECTION 2.** 13.48 (10) (a) of the statutes is amended to read:

6 13.48 (10) (a) No state board, agency, officer, department, commission or body
7 corporate may enter into a contract for the construction, reconstruction, remodeling
8 of or addition to any building, structure, or facility, in connection with any building
9 project which involves a cost in excess of \$150,000 \$250,000 without completion of
10 final plans and arrangement for supervision of construction and prior approval by
11 the building commission. The building commission may not approve a contract for
12 the construction, reconstruction, renovation or remodeling of or an addition to a state
13 building as defined in s. 44.51 (2) unless it determines that s. 44.57 has been complied
14 with or does not apply. This section applies to the department of transportation only
15 in respect to buildings, structures and facilities to be used for administrative or
16 operating functions, including buildings, land and equipment to be used for the
17 motor vehicle emission inspection and maintenance program under s. 110.20.

18 **SECTION 3.** 13.48 (19m) of the statutes is created to read:

19 13.48 (19m) **WAIVER OF CONSTRUCTION PROJECT CONTRACT REQUIREMENTS.** The
20 secretary of the building commission may waive compliance with any requirement
21 under s. 16.855 for any project the estimated cost of which is less than \$5,000,000.

22 **SECTION 4.** 13.48 (29) of the statutes is amended to read:

23 13.48 (29) **SMALL PROJECTS.** Except as otherwise required under s. 16.855
24 (10m), the building commission may prescribe simplified policies and procedures to
25 be used in lieu of the procedures provided in s. 16.855 for any project ~~that does not~~

1 ~~require prior approval of the building commission under sub. (10) (a) having an~~
2 ~~estimated cost that does not exceed \$500,000.~~

3 **SECTION 5.** 16.85 (1) of the statutes is amended to read:

4 16.85 (1) To take charge of and supervise all engineering or architectural
5 services or construction work as defined in s. 16.87 performed by, or for, the state, or
6 any department, board, institution, commission or officer thereof, including
7 nonprofit-sharing corporations organized for the purpose of assisting the state in the
8 construction and acquisition of new buildings or improvements and additions to
9 existing buildings as contemplated under ss. 13.488, 36.09 and 36.11, except the
10 engineering, architectural and construction work of the department of
11 transportation, the engineering service performed by the department of commerce,
12 department of revenue, public service commission, department of health services
13 and other departments, boards and commissions when the service is not related to
14 the maintenance, and construction and planning of the physical properties of the
15 state. For the purpose of selection of an appropriate engineer or architect for each
16 construction project under the department's supervision, except an emergency
17 project approved under s. 16.855 (16) (b) 2., the secretary shall appoint one or more
18 selection committees. If the estimated cost of a project is \$5,000,000 or more, the
19 selection committee shall interview each candidate for appointment as an engineer
20 or architect for the project, except that the secretary of administration or the
21 secretary to the building commission may waive this requirement when he or she
22 determines that it is in the best interests of the state to do so. The department shall
23 not authorize construction work for any state office facility in the city of Madison
24 after May 11, 1990, unless the department first provides suitable space for a day care
25 center primarily for use by children of state employees.

1 **SECTION 6.** 16.855 (2) (intro.) of the statutes is amended to read:

2 16.855 (2) (intro.) Except for projects authorized under s. 16.858, whenever the
3 estimated construction cost of a project exceeds \$40,000 \$100,000, or if less and in
4 the best interest of the state, the department shall:

5 **SECTION 7.** 16.855 (10) of the statutes is amended to read:

6 16.855 (10) When the department believes that it is in the best interests of the
7 state to contract for ~~certain~~ specified proprietary articles or materials ~~available from~~
8 ~~only one source~~, it may contract for said articles or materials ~~without~~ upon
9 solicitation of bids apart from the usual statutory procedure, after a publication of
10 a class 1 notice, under ch. 985, in the official state newspaper.

11 **SECTION 8.** 16.855 (13) (a) of the statutes is amended to read:

12 16.855 (13) (a) ~~A~~ The department may require each person who submits a bid
13 to provide a list of the subcontractors shall not be required to be submitted for work
14 to be performed with the its bid. The department may also require the each prime
15 contractor to submit in writing the names of prospective subcontractors for the
16 department's approval before the award of a contract to the prime contractor.

17 **SECTION 9.** 16.855 (22) of the statutes is amended to read:

18 16.855 (22) The provisions of this section, except sub. (10m), do not apply to
19 construction work for any project that does not require the prior approval of the
20 building commission under s. 13.48 (10) (a) if the project is constructed in accordance
21 with policies and procedures prescribed by the building commission under s. 13.48
22 (29). If the estimated construction cost of any project is at least \$40,000 \$100,000,
23 and the building commission elects to utilize the procedures prescribed under s.
24 13.48 (29) to construct the project, the department shall provide adequate public

1 notice of the project and the procedures to be utilized to construct the project on a
2 publicly accessible computer site.

3 **SECTION 10.** 16.87 (3) of the statutes is amended to read:

4 16.87 (3) Except as provided in sub. (4) and this subsection, a contract under
5 sub. (2) is not valid or effectual for any purpose until it is endorsed in writing and
6 approved by the secretary or the secretary's designated assistant and, if the contract
7 involves an expenditure over \$60,000, approved by the governor. The governor may
8 delegate the authority to approve any contract requiring his or her approval under
9 this subsection ~~that involves an expenditure of less than \$150,000~~ to the secretary
10 or the secretary's designee. Except as provided in sub. (4), no payment or
11 compensation for work done under any contract involving \$2,500 or more, except a
12 highway contract, may be made unless the written claim is audited and approved by
13 the secretary or the secretary's designee. Any change order to a contract requiring
14 approval under this subsection requires the prior approval by the secretary or the
15 secretary's designated assistant and, if the change order involves an expenditure
16 over \$60,000, the approval of the governor ~~or, if, unless~~ the governor delegates his
17 or her authority to approve contracts under this subsection ~~and the change order~~
18 ~~involves an expenditure of less than \$150,000, the approval of~~ to the secretary or the
19 secretary's designee.

20 **SECTION 11.** 20.867 (2) (r) of the statutes is amended to read:

21 20.867 (2) (r) *Planning and design.* As a continuing appropriation from the
22 building trust fund, any moneys allocated by the building commission for advance
23 planning and all moneys received as reimbursement for building trust fund advances
24 made for planning and design under this paragraph. The ~~governor, upon the~~
25 ~~approval of the building commission,~~ shall authorize the release of funds from this

1 appropriation for advance planning, preliminary studies and design and. The
2 ~~secretary of administration~~ building commission may transfer funds from this appropriation to other
3 accounts within the building trust fund.

4 **SECTION 12.** 20.924 (3m) of the statutes is created to read:

5 20.924 (3m) Subsection (1) (a) and (b) does not apply to the design,
6 construction, repair, remodeling, or improvement of any building, structure, or
7 facility, or the acquisition of land for that purpose, if the project is funded entirely
8 with federal funds or gifts, grants, or bequests, or a combination thereof.

9 **SECTION 9301. Initial applicability; Administration.**

10 (1) STATE BUILDING CONSTRUCTION PROCEDURES. The treatment of sections 13.48
11 (19m), 16.85 (1), 16.855 (2) (intro.), (10), (13) (a), and (22), and 16.87 (3) of the statutes
12 first applies with respect to contracts and change orders for services or construction
13 work entered into on the effective date of this subsection.

14 **SECTION 9306. Initial applicability; Building Commission.**

15 (1) The treatment of section 13.48 (10) (a) and (29) of the statutes first applies
16 with respect to contracts entered into on the effective date of this subsection.

17 (END)

2009-11 Budget Bill Statutory Language Drafting Request

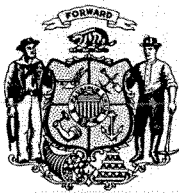
- Topic: Joint Committee on Finance enumeration of building projects
- Tracking Code:
- SBO team: State Government Operations
- SBO analyst: Scott B. Thornton
 - Phone: 266-5051
 - Email: Scott.Thornton@WI.gov
- Agency acronym: BC
- Agency number: 867
- Priority (Low, Medium, High): High

Intent:

Building projects in the state building program required enumeration in the capital budget if the estimated cost of the project is \$500,000 or more.

We would like the Joint Committee on Finance to have the authority to enumerate state projects in the building program with estimated costs of \$500,000 or more if they are being funded by Federal ^{Funds} Stimulus and have not been enumerated previously in the capital budget.

P/c 1/29/09



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17 motor vehicle emission inspection and maintenance program under s. 110.20.

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8 with federal funds or gifts, grants, or bequests, or a combination thereof. *and the*
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9 **SECTION 9301. Initial applicability; Administration.**

10 (1) STATE BUILDING CONSTRUCTION PROCEDURES. The treatment of sections 13.48
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12 first applies with respect to contracts and change orders for services or construction
13 work entered into on the effective date of this subsection.

14 **SECTION 9306. Initial applicability; Building Commission.**

15 (1) The treatment of section 13.48 (10) (a) and (29) of the statutes first applies
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17 (END)



(DNOTE)
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STATE BUILDING PROGRAM

This bill makes various changes in state building construction procedures.

Currently, with certain exceptions, no state board, agency, officer, department, commission, or body corporate may enter into a construction contract for any state building, structure, or facility if the project involves an estimated cost of more than \$150,000, without review and approval of the project by the Building Commission. This bill changes this requirement to apply only to projects having an estimated cost of more than \$250,000.

Currently, with certain exceptions, the Building Commission is prohibited from authorizing the design, construction, repair, remodeling, or improvement of any state building, structure, or facility, or the acquisition of land for that purpose, for any project costing more than \$500,000, regardless of funding source, unless the project is enumerated by law in the Authorized State Building Program. This bill provides that this enumeration requirement does not apply to any proposed project that is funded entirely with federal funds or gifts, grants, or bequests if the project is approved by JCF.

Currently, with certain exceptions, contracts for construction work on state construction projects that cost more than \$40,000 must be let by contract to the lowest responsible bidder and must be preceded by public notice and a public bidding

process. Wisconsin-based bidders are accorded a preference over bidders whose home governments grant them a preference in making governmental purchases. DOA must attempt to ensure that 5 percent of the total amount expended for construction work in each fiscal year is awarded to minority-owned businesses. With certain exceptions, DOA must take separate bids on each portion of the work that DOA designates. Contractors must be granted certain progress payments while a project is underway. This bill permits the secretary of the Building Commission to waive any of these requirements for any project the cost of which is less than \$5,000,000.

Currently, with certain exceptions, contracts for work to be performed on projects that require review and approval by the Building Commission must be let by bid preceded by public notice and must be awarded to the lowest responsible bidder, and are subject to minority-owned business participation goals and certain other requirements. This bill applies these requirements only to projects having an estimated cost of \$500,000 or more.

Currently, with certain exceptions, if a project has an estimated cost of more than \$40,000, contracts for work to be performed on the project must be let by sealed bid preceded by public notice which must contain specified information and the bids must be opened publicly and must include a bid guarantee. This bill retains the requirement for letting these contracts to the lowest responsible bidder, but applies other specific bidding requirements only to a project that has an estimated cost of more than \$100,000.

Currently, when DOA believes that it is in the best interests of the state to contract for certain proprietary articles or materials available from only one source, it may contract for the articles or materials without solicitation of bids or compliance with other statutory requirements after publishing a single notice of its intention to let the contract in the official state newspaper. This bill modifies this procedure to apply to specified proprietary articles or materials regardless of whether they are obtainable from only one source, but requires solicitation of bids when the procedure is used.

Currently, with certain exceptions, a bidder on a contract for a state project need not submit with its bid a list of the subcontractors to be used on the project, but DOA may require a list of the subcontractors to be submitted before the contract is awarded. This bill permits DOA to require each bidder on a state project to submit with its bid a list of its subcontractors to be used on the project.

Currently, with certain exceptions, if a contract for a state project or a change order to such a contract involves an expenditure of more than \$60,000, the contract is subject to the governor's approval, but the governor may delegate his or her authority to approve a contract or change order involving an expenditure of less than \$150,000 to the secretary of administration or the secretary's designee. This bill permits the governor to delegate his or her authority to approve a contract or change order involving an expenditure of any amount to the secretary of administration or the secretary's designee.

Currently, with certain exceptions, DOA has the responsibility to take charge of and supervise all engineering and architectural services for state projects. This

bill provides that, with certain exceptions, for the purpose of selection of an appropriate engineer or architect for each state project, DOA shall appoint one or more selection committees. The bill also requires that for each project having an estimated cost of \$5,000,000 or more, the selection committee shall interview each candidate for appointment as an engineer or architect, except that the secretary of administration or the secretary to the Building Commission may waive this requirement when he or she determines that is in the best interests of the state to do so.

Currently, the governor, upon approval of the Building Commission, must authorize expenditure of moneys for planning and design of state building projects. The governor may transfer moneys from the appropriation in the state building trust fund for planning and design to other appropriations in the building trust fund. This bill directs the Building Commission to authorize expenditure of moneys for planning and design of state building projects. The bill also permits the Building Commission to transfer moneys from the appropriation in the building trust fund for planning and design of state building projects to other appropriations in the building trust fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.48 (2) (a) of the statutes is amended to read:

2 13.48 (2) (a) There is created a building commission consisting of the governor,
3 who shall serve as chairperson, and 3 senators and 3 representatives to the assembly
4 appointed as are the members of standing committees in their respective houses.
5 The 2 major political parties shall be represented in the membership from each
6 house. One legislator from each house shall be a member of the state supported
7 programs study and advisory committee created by s. 13.47. One citizen member
8 shall be appointed by the governor to serve at the governor's pleasure. The secretary,
9 head of the engineering function, and ranking architect of the department of
10 administration shall be nonvoting advisory members. The secretary of
11 administration shall designate an employee of the department of administration to
12 serve as secretary to the building commission. The building commission shall bear

1 a title beginning with the words "State of Wisconsin". The members shall be liable
2 only for misconduct. Nonlegislator members of the building commission shall be
3 reimbursed for actual and necessary expenses, incurred as members of the building
4 commission, from the appropriation under s. 20.505.

5 **SECTION 2.** 13.48 (10) (a) of the statutes is amended to read:

6 13.48 (10) (a) No state board, agency, officer, department, commission or body
7 corporate may enter into a contract for the construction, reconstruction, remodeling
8 of or addition to any building, structure, or facility, in connection with any building
9 project which involves a cost in excess of \$150,000 \$250,000 without completion of
10 final plans and arrangement for supervision of construction and prior approval by
11 the building commission. The building commission may not approve a contract for
12 the construction, reconstruction, renovation or remodeling of or an addition to a state
13 building as defined in s. 44.51 (2) unless it determines that s. 44.57 has been complied
14 with or does not apply. This section applies to the department of transportation only
15 in respect to buildings, structures and facilities to be used for administrative or
16 operating functions, including buildings, land and equipment to be used for the
17 motor vehicle emission inspection and maintenance program under s. 110.20.

18 **SECTION 3.** 13.48 (19m) of the statutes is created to read:

19 13.48 (19m) **WAIVER OF CONSTRUCTION PROJECT CONTRACT REQUIREMENTS.** The
20 secretary of the building commission may waive compliance with any requirement
21 under s. 16.855 for any project the estimated cost of which is less than \$5,000,000.

22 **SECTION 4.** 13.48 (29) of the statutes is amended to read:

23 13.48 (29) **SMALL PROJECTS.** Except as otherwise required under s. 16.855
24 (10m), the building commission may prescribe simplified policies and procedures to
25 be used in lieu of the procedures provided in s. 16.855 for any project that does not

1 ~~require prior approval of the building commission under sub. (10) (a) having an~~
2 ~~estimated cost that does not exceed \$500,000.~~

3 **SECTION 5.** 16.85 (1) of the statutes is amended to read:

4 16.85 (1) To take charge of and supervise all engineering or architectural
5 services or construction work as defined in s. 16.87 performed by, or for, the state, or
6 any department, board, institution, commission or officer thereof, including
7 nonprofit-sharing corporations organized for the purpose of assisting the state in the
8 construction and acquisition of new buildings or improvements and additions to
9 existing buildings as contemplated under ss. 13.488, 36.09 and 36.11, except the
10 engineering, architectural and construction work of the department of
11 transportation, the engineering service performed by the department of commerce,
12 department of revenue, public service commission, department of health services
13 and other departments, boards and commissions when the service is not related to
14 the maintenance, and construction and planning of the physical properties of the
15 state. For the purpose of selection of an appropriate engineer or architect for each
16 construction project under the department's supervision, except an emergency
17 project approved under s. 16.855 (16) (b) 2., the secretary shall appoint one or more
18 selection committees. If the estimated cost of a project is \$5,000,000 or more, the
19 selection committee shall interview each candidate for appointment as an engineer
20 or architect for the project, except that the secretary of administration or the
21 secretary to the building commission may waive this requirement when he or she
22 determines that it is in the best interests of the state to do so. The department shall
23 not authorize construction work for any state office facility in the city of Madison
24 after May 11, 1990, unless the department first provides suitable space for a day care
25 center primarily for use by children of state employees.

1 **SECTION 6.** 16.855 (2) (intro.) of the statutes is amended to read:

2 16.855 (2) (intro.) Except for projects authorized under s. 16.858, whenever the
3 estimated construction cost of a project exceeds \$40,000 \$100,000, or if less and in
4 the best interest of the state, the department shall:

5 **SECTION 7.** 16.855 (10) of the statutes is amended to read:

6 16.855 (10) When the department believes that it is in the best interests of the
7 state to contract for ~~certain~~ specified proprietary articles or materials ~~available from~~
8 ~~only one source~~, it may contract for said articles or materials ~~without~~ upon
9 solicitation of bids apart from the usual statutory procedure, after a publication of
10 a class 1 notice, under ch. 985, in the official state newspaper.

11 **SECTION 8.** 16.855 (13) (a) of the statutes is amended to read:

12 16.855 (13) (a) ~~A~~ The department may require each person who submits a bid
13 to provide a list of the subcontractors shall not be required to be submitted for work
14 to be performed with the its bid. The department may also require the each prime
15 contractor to submit in writing the names of prospective subcontractors for the
16 department's approval before the award of a contract to the prime contractor.

17 **SECTION 9.** 16.855 (22) of the statutes is amended to read:

18 16.855 (22) The provisions of this section, except sub. (10m), do not apply to
19 construction work for any project that does not require the prior approval of the
20 building commission under s. 13.48 (10) (a) if the project is constructed in accordance
21 with policies and procedures prescribed by the building commission under s. 13.48
22 (29). If the estimated construction cost of any project is at least \$40,000 \$100,000,
23 and the building commission elects to utilize the procedures prescribed under s.
24 13.48 (29) to construct the project, the department shall provide adequate public

1 notice of the project and the procedures to be utilized to construct the project on a
2 publicly accessible computer site.

3 **SECTION 10.** 16.87 (3) of the statutes is amended to read:

4 16.87 (3) Except as provided in sub. (4) and this subsection, a contract under
5 sub. (2) is not valid or effectual for any purpose until it is endorsed in writing and
6 approved by the secretary or the secretary's designated assistant and, if the contract
7 involves an expenditure over \$60,000, approved by the governor. The governor may
8 delegate the authority to approve any contract requiring his or her approval under
9 this subsection ~~that involves an expenditure of less than \$150,000~~ to the secretary
10 or the secretary's designee. Except as provided in sub. (4), no payment or
11 compensation for work done under any contract involving \$2,500 or more, except a
12 highway contract, may be made unless the written claim is audited and approved by
13 the secretary or the secretary's designee. Any change order to a contract requiring
14 approval under this subsection requires the prior approval by the secretary or the
15 secretary's designated assistant and, if the change order involves an expenditure
16 over \$60,000, the approval of the governor ~~or, if, unless~~ the governor delegates his
17 or her authority to approve contracts under this subsection ~~and the change order~~
18 ~~involves an expenditure of less than \$150,000, the approval of~~ to the secretary or the
19 secretary's designee.

20 **SECTION 11.** 20.867 (2) (r) of the statutes is amended to read:

21 20.867 (2) (r) *Planning and design.* As a continuing appropriation from the
22 building trust fund, any moneys allocated by the building commission for advance
23 planning and all moneys received as reimbursement for building trust fund advances
24 made for planning and design under this paragraph. The governor, ~~upon the~~
25 ~~approval of the building commission,~~ shall authorize the release of funds from this

1 appropriation for advance planning, preliminary studies and design and. The
2 building commission may transfer funds from this appropriation to other accounts
3 within the building trust fund.

4 **SECTION 12.** 20.924 (3m) of the statutes is created to read:

5 20.924 (3m) Subsection (1) (a) and (b) does not apply to the design,
6 construction, repair, remodeling, or improvement of any building, structure, or
7 facility, or the acquisition of land for that purpose, if the project is funded entirely
8 with federal funds or gifts, grants, or bequests, or a combination thereof and the
9 project is approved by the joint committee on finance.

10 **SECTION 9301. Initial applicability; Administration.**

11 (1) STATE BUILDING CONSTRUCTION PROCEDURES. The treatment of sections 13.48
12 (19m), 16.85 (1), 16.855 (2) (intro.), (10), (13) (a), and (22), and 16.87 (3) of the statutes
13 first applies with respect to contracts and change orders for services or construction
14 work entered into on the effective date of this subsection.

15 **SECTION 9306. Initial applicability; Building Commission.**

16 (1) The treatment of section 13.48 (10) (a) and (29) of the statutes first applies
17 with respect to contracts entered into on the effective date of this subsection.

18 (END)

TWS 8-3

X
Section #. 20.924 (1) (intro.) of the statutes is amended to read:

sub. (3) and (3m)

20.924 (1) (intro.) Except as provided in sub. (3), in supervising and authorizing the implementation of the state building program under the appropriation authority of s. 20.867, the building commission:

History: 1971 c. 125; 1973 c. 90; 1979 c. 34 s. 2102 (6) (a), (23) (a); 1983 a. 27 s. 2202 (23); 1985 a. 29 s. 3202 (26) (a); 1991 a. 269; 1993 a. 16; 1997 a. 5, 27; 1999 a. 9, 197; 2001 a. 16, 109; 2003 a. 326; 2005 a. 141, 391.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1276/6dn

JTK.....

g Ljk

Date

Scott Thornton:

This redraft adds a cross reference to s. 20.924 (1) (intro.), stats.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1276/6dn
JTK:bjk:jf

February 4, 2009

Scott Thornton:

This redraft adds a cross reference to s. 20.924 (1) (intro.), stats.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1276/6

JTK:bjk:jf

Stay

DOA:.....Thornton, BB0316 - State building construction procedures
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA-
do not gen.
1 AN ACT ...; relating to: state building construction procedures.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE BUILDING PROGRAM

This bill makes various changes in state building construction procedures.

Currently, with certain exceptions, no state board, agency, officer, department, commission, or body corporate may enter into a construction contract for any state building, structure, or facility if the project involves an estimated cost of more than \$150,000, without review and approval of the project by the Building Commission. This bill changes this requirement to apply only to projects having an estimated cost of more than \$250,000.

Currently, with certain exceptions, the Building Commission is prohibited from authorizing the design, construction, repair, remodeling, or improvement of any state building, structure, or facility, or the acquisition of land for that purpose, for any project costing more than \$500,000, regardless of funding source, unless the project is enumerated by law in the Authorized State Building Program. This bill provides that this enumeration requirement ~~does not apply to~~ any proposed project that is funded entirely with federal funds or gifts, grants, or bequests if the project is approved by JCF. *exempt from the* *The exemption does not apply after June 30, 2010*

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process. Wisconsin-based bidders are accorded a preference over bidders whose home governments grant them a preference in making governmental purchases. DOA must attempt to ensure that 5 percent of the total amount expended for construction work in each fiscal year is awarded to minority-owned businesses. With certain exceptions, DOA must take separate bids on each portion of the work that DOA designates. Contractors must be granted certain progress payments while a project is underway. This bill permits the secretary of the Building Commission to waive any of these requirements for any project the cost of which is less than \$5,000,000.

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Currently, with certain exceptions, if a contract for a state project or a change order to such a contract involves an expenditure of more than \$60,000, the contract is subject to the governor's approval, but the governor may delegate his or her authority to approve a contract or change order involving an expenditure of less than \$150,000 to the secretary of administration or the secretary's designee. This bill permits the governor to delegate his or her authority to approve a contract or change order involving an expenditure of any amount to the secretary of administration or the secretary's designee.

Currently, with certain exceptions, DOA has the responsibility to take charge of and supervise all engineering and architectural services for state projects. This

bill provides that, with certain exceptions, for the purpose of selection of an appropriate engineer or architect for each state project, DOA shall appoint one or more selection committees. The bill also requires that for each project having an estimated cost of \$5,000,000 or more, the selection committee shall interview each candidate for appointment as an engineer or architect, except that the secretary of administration or the secretary to the Building Commission may waive this requirement when he or she determines that is in the best interests of the state to do so.

Currently, the governor, upon approval of the Building Commission, must authorize expenditure of moneys for planning and design of state building projects. The governor may transfer moneys from the appropriation in the state building trust fund for planning and design to other appropriations in the building trust fund. This bill directs the Building Commission to authorize expenditure of moneys for planning and design of state building projects. The bill also permits the Building Commission to transfer moneys from the appropriation in the building trust fund for planning and design of state building projects to other appropriations in the building trust fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.48 (2) (a) of the statutes is amended to read:

2 13.48 (2) (a) There is created a building commission consisting of the governor,
3 who shall serve as chairperson, and 3 senators and 3 representatives to the assembly
4 appointed as are the members of standing committees in their respective houses.
5 The 2 major political parties shall be represented in the membership from each
6 house. One legislator from each house shall be a member of the state supported
7 programs study and advisory committee created by s. 13.47. One citizen member
8 shall be appointed by the governor to serve at the governor's pleasure. The secretary,
9 head of the engineering function, and ranking architect of the department of
10 administration shall be nonvoting advisory members. The secretary of
11 administration shall designate an employee of the department of administration to
12 serve as secretary to the building commission. The building commission shall bear

1 a title beginning with the words "State of Wisconsin". The members shall be liable
2 only for misconduct. Nonlegislator members of the building commission shall be
3 reimbursed for actual and necessary expenses, incurred as members of the building
4 commission, from the appropriation under s. 20.505.

5 **SECTION 2.** 13.48 (10) (a) of the statutes is amended to read:

6 13.48 (10) (a) No state board, agency, officer, department, commission or body
7 corporate may enter into a contract for the construction, reconstruction, remodeling
8 of or addition to any building, structure, or facility, in connection with any building
9 project which involves a cost in excess of \$150,000 \$250,000 without completion of
10 final plans and arrangement for supervision of construction and prior approval by
11 the building commission. The building commission may not approve a contract for
12 the construction, reconstruction, renovation or remodeling of or an addition to a state
13 building as defined in s. 44.51 (2) unless it determines that s. 44.57 has been complied
14 with or does not apply. This section applies to the department of transportation only
15 in respect to buildings, structures and facilities to be used for administrative or
16 operating functions, including buildings, land and equipment to be used for the
17 motor vehicle emission inspection and maintenance program under s. 110.20.

18 **SECTION 3.** 13.48 (19m) of the statutes is created to read:

19 13.48 (19m) WAIVER OF CONSTRUCTION PROJECT CONTRACT REQUIREMENTS. The
20 secretary of the building commission may waive compliance with any requirement
21 under s. 16.855 for any project the estimated cost of which is less than \$5,000,000.

22 **SECTION 4.** 13.48 (29) of the statutes is amended to read:

23 13.48 (29) SMALL PROJECTS. Except as otherwise required under s. 16.855
24 (10m), the building commission may prescribe simplified policies and procedures to
25 be used in lieu of the procedures provided in s. 16.855 for any project ~~that does not~~

1 ~~require prior approval of the building commission under sub. (10) (a) having an~~
2 ~~estimated cost that does not exceed \$500,000.~~

3 SECTION 5. 16.85 (1) of the statutes is amended to read:

4 16.85 (1) To take charge of and supervise all engineering or architectural
5 services or construction work as defined in s. 16.87 performed by, or for, the state, or
6 any department, board, institution, commission or officer thereof, including
7 nonprofit-sharing corporations organized for the purpose of assisting the state in the
8 construction and acquisition of new buildings or improvements and additions to
9 existing buildings as contemplated under ss. 13.488, 36.09 and 36.11, except the
10 engineering, architectural and construction work of the department of
11 transportation, the engineering service performed by the department of commerce,
12 department of revenue, public service commission, department of health services
13 and other departments, boards and commissions when the service is not related to
14 the maintenance, and construction and planning of the physical properties of the
15 state. For the purpose of selection of an appropriate engineer or architect for each
16 construction project under the department's supervision, except an emergency
17 project approved under s. 16.855 (16) (b) 2., the secretary shall appoint one or more
18 selection committees. If the estimated cost of a project is \$5,000,000 or more, the
19 selection committee shall interview each candidate for appointment as an engineer
20 or architect for the project, except that the secretary of administration or the
21 secretary to the building commission may waive this requirement when he or she
22 determines that it is in the best interests of the state to do so. The department shall
23 not authorize construction work for any state office facility in the city of Madison
24 after May 11, 1990, unless the department first provides suitable space for a day care
25 center primarily for use by children of state employees.

1 **SECTION 6.** 16.855 (2) (intro.) of the statutes is amended to read:

2 16.855 (2) (intro.) Except for projects authorized under s. 16.858, whenever the
3 estimated construction cost of a project exceeds \$40,000 \$100,000, or if less and in
4 the best interest of the state, the department shall:

5 **SECTION 7.** 16.855 (10) of the statutes is amended to read:

6 16.855 (10) When the department believes that it is in the best interests of the
7 state to contract for ~~certain~~ specified proprietary articles or materials ~~available from~~
8 ~~only one source~~, it may contract for said articles or materials ~~without upon~~
9 solicitation of bids apart from the usual statutory procedure, after a publication of
10 a class 1 notice, under ch. 985, in the official state newspaper.

11 **SECTION 8.** 16.855 (13) (a) of the statutes is amended to read:

12 16.855 (13) (a) ~~A~~ The department may require each person who submits a bid
13 to provide a list of the subcontractors shall not be required to be submitted for work
14 to be performed with the its bid. The department may also require the each prime
15 contractor to submit in writing the names of prospective subcontractors for the
16 department's approval before the award of a contract to the prime contractor.

17 **SECTION 9.** 16.855 (22) of the statutes is amended to read:

18 16.855 (22) The provisions of this section, except sub. (10m), do not apply to
19 construction work for any project that does not require the prior approval of the
20 building commission under s. 13.48 (10) (a) if the project is constructed in accordance
21 with policies and procedures prescribed by the building commission under s. 13.48
22 (29). If the estimated construction cost of any project is at least \$40,000 \$100,000,
23 and the building commission elects to utilize the procedures prescribed under s.
24 13.48 (29) to construct the project, the department shall provide adequate public

1 notice of the project and the procedures to be utilized to construct the project on a
2 publicly accessible computer site.

3 **SECTION 10.** 16.87 (3) of the statutes is amended to read:

4 16.87 (3) Except as provided in sub. (4) and this subsection, a contract under
5 sub. (2) is not valid or effectual for any purpose until it is endorsed in writing and
6 approved by the secretary or the secretary's designated assistant and, if the contract
7 involves an expenditure over \$60,000, approved by the governor. The governor may
8 delegate the authority to approve any contract requiring his or her approval under
9 this subsection ~~that involves an expenditure of less than \$150,000 to the secretary~~
10 ~~or the secretary's designee. Except as provided in sub. (4), no payment or~~
11 ~~compensation for work done under any contract involving \$2,500 or more, except a~~
12 ~~highway contract, may be made unless the written claim is audited and approved by~~
13 ~~the secretary or the secretary's designee. Any change order to a contract requiring~~
14 ~~approval under this subsection requires the prior approval by the secretary or the~~
15 ~~secretary's designated assistant and, if the change order involves an expenditure~~
16 ~~over \$60,000, the approval of the governor or, if, unless the governor delegates his~~
17 ~~or her authority to approve contracts under this subsection and the change order~~
18 ~~involves an expenditure of less than \$150,000, the approval of to the secretary or the~~
19 ~~secretary's designee.~~

20 **SECTION 11.** 20.867 (2) (r) of the statutes is amended to read:

21 20.867 (2) (r) *Planning and design.* As a continuing appropriation from the
22 building trust fund, any moneys allocated by the building commission for advance
23 planning and all moneys received as reimbursement for building trust fund advances
24 made for planning and design under this paragraph. The governor, ~~upon the~~
25 ~~approval of the building commission,~~ shall authorize the release of funds from this

1 appropriation for advance planning, preliminary studies and design and. The
2 building commission may transfer funds from this appropriation to other accounts
3 within the building trust fund.

4 **SECTION 12.** 20.924 (1) (intro.) of the statutes is amended to read:

5 20.924 (1) (intro.) Except as provided in sub. ~~(3)~~ subs. (3) and (3m), in
6 supervising and authorizing the implementation of the state building program
7 under the appropriation authority of s. 20.867, the building commission:

8 **SECTION 13.** 20.924 (3m) of the statutes is created to read:

9 20.924 (3m) Subsection (1) (a) and (b) does not apply to the design,
10 construction, repair, remodeling, or improvement of any building, structure, or
11 facility, or the acquisition of land for that purpose, if the project is funded entirely
12 with federal funds or gifts, grants, or bequests, or a combination thereof and the
13 project is approved by the joint committee on finance.

14 **SECTION 9301. Initial applicability; Administration.**

15 (1) STATE BUILDING CONSTRUCTION PROCEDURES. The treatment of sections 13.48
16 (19m), 16.85 (1), 16.855 (2) (intro.), (10), (13) (a), and (22), and 16.87 (3) of the statutes
17 first applies with respect to contracts and change orders for services or construction
18 work entered into on the effective date of this subsection.

19 **SECTION 9306. Initial applicability; Building Commission.**

20 ~~APPROVAL OF PROJECTS; CONTRACTING PROCEDURES~~
(1) The treatment of section 13.48 (10) (a) and (29) of the statutes first applies
21 with respect to contracts entered into on the effective date of this subsection.

22 (END)

20.924 (1) (intro.) Except as provided in sub. (3) ~~subs. (3) and (3m)~~, in supervising and authorizing the implementation of the state building program under the appropriation authority of s. 20.867, the building commission:

^{a.r. A} SECTION ~~2~~ 20.924 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act ... (this act), is amended to read:

8-3 20.924 (1) (intro.) Except as provided in ~~subs.~~ sub. (3) and ~~(3m)~~, in supervising and authorizing the implementation of the state building program under the appropriation authority of s. 20.867, the building commission:

SECTION 3. 20.924 (3m) of the statutes is created to read:

20.924 (3m) Subsection (1) (a) and (b) does not apply to the design, construction, repair, remodeling, or improvement of any building, structure, or facility, or the acquisition of land for that purpose, if the project is funded entirely with federal funds or gifts, grants, or bequests, or a combination thereof and the project is approved by the joint committee on finance.

^{a.r. B} SECTION ~~4~~ 20.924 (3m) of the statutes, as created by 2009 Wisconsin Act ... (this act), is repealed.

SECTION 9406. Effective dates; Building Commission.

8-2 (1) EXEMPTION OF CERTAIN PROJECTS FROM ENUMERATION. The treatment of section 20.924 (1) (intro.) (by SECTION 2) and (3m) (by Section 4) of the statutes takes effect on July 1, 2011.

(END)

Kuesel, Jeffery

From: Thornton, Scott - DOA [scott.thornton@wisconsin.gov]
Sent: Monday, February 09, 2009 4:36 PM
To: Kuesel, Jeffery
Cc: Hanaman, Cathlene; Beadles, Kathleen - DOA; Kraus, Jennifer - DOA
Subject: Building Commission Enumeration 1951/2 is now OUT

Jeff -

This is a follow-up to my voice mail.

For the Budget Adjustment Bill - 1951/2 "Certain state building projects exempt from enumeration" is OUT. Apparently there will be some new language related to the stimulus that covers this.

For the 2009-11 Budget - Section 12 and 13 addressing enumeration of projects and Joint Committee on Finance approval should come out (Section 12 and 13 of 1276/6).

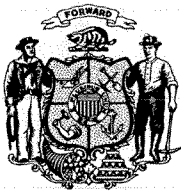
Please call if you have questions.

Thanks,

Scott

Scott B. Thornton
State Government Operations Team
State Budget Office
Wisconsin Department of Administration
(608) 266-5051
scott.thornton@wi.gov

02/09/2009



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1276/8

JTK:bjk:md

Lstacy

DOA:.....Thornton, BB0316 - State building construction procedures

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA -
do not gen.
1 AN ACT ...; relating to: state building construction procedures.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE BUILDING PROGRAM

This bill makes various changes in state building construction procedures.

Currently, with certain exceptions, no state board, agency, officer, department, commission, or body corporate may enter into a construction contract for any state building, structure, or facility if the project involves an estimated cost of more than \$150,000, without review and approval of the project by the Building Commission. This bill changes this requirement to apply only to projects having an estimated cost of more than \$250,000.

> Currently, with certain exceptions, the Building Commission is prohibited from authorizing the design, construction, repair, remodeling, or improvement of any state building, structure, or facility, or the acquisition of land for that purpose, for any project costing more than \$500,000, regardless of funding source, unless the project is enumerated by law in the Authorized State Building Program. This bill exempts from the enumeration requirement any proposed project that is funded entirely with federal funds or gifts, grants, or bequests if the project is approved by JCF. The exemption does not apply after June 30, 2011.

Currently, with certain exceptions, contracts for construction work on state construction projects that cost more than \$40,000 must be let by contract to the lowest responsible bidder and must be preceded by public notice and a public bidding

process. Wisconsin-based bidders are accorded a preference over bidders whose home governments grant them a preference in making governmental purchases. DOA must attempt to ensure that 5 percent of the total amount expended for construction work in each fiscal year is awarded to minority-owned businesses. With certain exceptions, DOA must take separate bids on each portion of the work that DOA designates. Contractors must be granted certain progress payments while a project is underway. This bill permits the secretary of the Building Commission to waive any of these requirements for any project the cost of which is less than \$5,000,000.

Currently, with certain exceptions, contracts for work to be performed on projects that require review and approval by the Building Commission must be let by bid preceded by public notice and must be awarded to the lowest responsible bidder, and are subject to minority-owned business participation goals and certain other requirements. This bill applies these requirements only to projects having an estimated cost of \$500,000 or more.

Currently, with certain exceptions, if a project has an estimated cost of more than \$40,000, contracts for work to be performed on the project must be let by sealed bid preceded by public notice which must contain specified information and the bids must be opened publicly and must include a bid guarantee. This bill retains the requirement for letting these contracts to the lowest responsible bidder, but applies other specific bidding requirements only to a project that has an estimated cost of more than \$100,000.

Currently, when DOA believes that it is in the best interests of the state to contract for certain proprietary articles or materials available from only one source, it may contract for the articles or materials without solicitation of bids or compliance with other statutory requirements after publishing a single notice of its intention to let the contract in the official state newspaper. This bill modifies this procedure to apply to specified proprietary articles or materials regardless of whether they are obtainable from only one source, but requires solicitation of bids when the procedure is used.

Currently, with certain exceptions, a bidder on a contract for a state project need not submit with its bid a list of the subcontractors to be used on the project, but DOA may require a list of the subcontractors to be submitted before the contract is awarded. This bill permits DOA to require each bidder on a state project to submit with its bid a list of its subcontractors to be used on the project.

Currently, with certain exceptions, if a contract for a state project or a change order to such a contract involves an expenditure of more than \$60,000, the contract is subject to the governor's approval, but the governor may delegate his or her authority to approve a contract or change order involving an expenditure of less than \$150,000 to the secretary of administration or the secretary's designee. This bill permits the governor to delegate his or her authority to approve a contract or change order involving an expenditure of any amount to the secretary of administration or the secretary's designee.

Currently, with certain exceptions, DOA has the responsibility to take charge of and supervise all engineering and architectural services for state projects. This

bill provides that, with certain exceptions, for the purpose of selection of an appropriate engineer or architect for each state project, DOA shall appoint one or more selection committees. The bill also requires that for each project having an estimated cost of \$5,000,000 or more, the selection committee shall interview each candidate for appointment as an engineer or architect, except that the secretary of administration or the secretary to the Building Commission may waive this requirement when he or she determines that is in the best interests of the state to do so.

Currently, the governor, upon approval of the Building Commission, must authorize expenditure of moneys for planning and design of state building projects. The governor may transfer moneys from the appropriation in the state building trust fund for planning and design to other appropriations in the building trust fund. This bill directs the Building Commission to authorize expenditure of moneys for planning and design of state building projects. The bill also permits the Building Commission to transfer moneys from the appropriation in the building trust fund for planning and design of state building projects to other appropriations in the building trust fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.48 (2) (a) of the statutes is amended to read:

2 13.48 (2) (a) There is created a building commission consisting of the governor,
3 who shall serve as chairperson, and 3 senators and 3 representatives to the assembly
4 appointed as are the members of standing committees in their respective houses.
5 The 2 major political parties shall be represented in the membership from each
6 house. One legislator from each house shall be a member of the state supported
7 programs study and advisory committee created by s. 13.47. One citizen member
8 shall be appointed by the governor to serve at the governor's pleasure. The secretary,
9 head of the engineering function, and ranking architect of the department of
10 administration shall be nonvoting advisory members. The secretary of
11 administration shall designate an employee of the department of administration to
12 serve as secretary to the building commission. The building commission shall bear

1 a title beginning with the words "State of Wisconsin". The members shall be liable
2 only for misconduct. Nonlegislator members of the building commission shall be
3 reimbursed for actual and necessary expenses, incurred as members of the building
4 commission, from the appropriation under s. 20.505.

5 **SECTION 2.** 13.48 (10) (a) of the statutes is amended to read:

6 13.48 (10) (a) No state board, agency, officer, department, commission or body
7 corporate may enter into a contract for the construction, reconstruction, remodeling
8 of or addition to any building, structure, or facility, in connection with any building
9 project which involves a cost in excess of \$150,000 \$250,000 without completion of
10 final plans and arrangement for supervision of construction and prior approval by
11 the building commission. The building commission may not approve a contract for
12 the construction, reconstruction, renovation or remodeling of or an addition to a state
13 building as defined in s. 44.51 (2) unless it determines that s. 44.57 has been complied
14 with or does not apply. This section applies to the department of transportation only
15 in respect to buildings, structures and facilities to be used for administrative or
16 operating functions, including buildings, land and equipment to be used for the
17 motor vehicle emission inspection and maintenance program under s. 110.20.

18 **SECTION 3.** 13.48 (19m) of the statutes is created to read:

19 13.48 (19m) **WAIVER OF CONSTRUCTION PROJECT CONTRACT REQUIREMENTS.** The
20 secretary of the building commission may waive compliance with any requirement
21 under s. 16.855 for any project the estimated cost of which is less than \$5,000,000.

22 **SECTION 4.** 13.48 (29) of the statutes is amended to read:

23 13.48 (29) **SMALL PROJECTS.** Except as otherwise required under s. 16.855
24 (10m), the building commission may prescribe simplified policies and procedures to
25 be used in lieu of the procedures provided in s. 16.855 for any project that does not

1 ~~require prior approval of the building commission under sub. (10) (a) having an~~
2 ~~estimated cost that does not exceed \$500,000.~~

3 **SECTION 5.** 16.85 (1) of the statutes is amended to read:

4 16.85 (1) To take charge of and supervise all engineering or architectural
5 services or construction work as defined in s. 16.87 performed by, or for, the state, or
6 any department, board, institution, commission or officer thereof, including
7 nonprofit-sharing corporations organized for the purpose of assisting the state in the
8 construction and acquisition of new buildings or improvements and additions to
9 existing buildings as contemplated under ss. 13.488, 36.09 and 36.11, except the
10 engineering, architectural and construction work of the department of
11 transportation, the engineering service performed by the department of commerce,
12 department of revenue, public service commission, department of health services
13 and other departments, boards and commissions when the service is not related to
14 the maintenance, and construction and planning of the physical properties of the
15 state. For the purpose of selection of an appropriate engineer or architect for each
16 construction project under the department's supervision, except an emergency
17 project approved under s. 16.855 (16) (b) 2., the secretary shall appoint one or more
18 selection committees. If the estimated cost of a project is \$5,000,000 or more, the
19 selection committee shall interview each candidate for appointment as an engineer
20 or architect for the project, except that the secretary of administration or the
21 secretary to the building commission may waive this requirement when he or she
22 determines that it is in the best interests of the state to do so. The department shall
23 not authorize construction work for any state office facility in the city of Madison
24 after May 11, 1990, unless the department first provides suitable space for a day care
25 center primarily for use by children of state employees.

SECTION 6. 16.855 (2) (intro.) of the statutes is amended to read:

16.855 (2) (intro.) Except for projects authorized under s. 16.858, whenever the estimated construction cost of a project exceeds \$40,000 \$100,000, or if less and in the best interest of the state, the department shall:

SECTION 7. 16.855 (10) of the statutes is amended to read:

16.855 (10) When the department believes that it is in the best interests of the state to contract for ~~certain specified proprietary~~ articles or materials ~~available from only one source~~, it may contract for said articles or materials without upon solicitation of bids apart from the usual statutory procedure, after a publication of a class 1 notice, under ch. 985, in the official state newspaper.

SECTION 8. 16.855 (13) (a) of the statutes is amended to read:

16.855 (13) (a) ~~A~~ The department may require each person who submits a bid to provide a list of the subcontractors shall not be required to be submitted for work to be performed with the its bid. The department may also require the each prime contractor to submit in writing the names of prospective subcontractors for the department's approval before the award of a contract to the prime contractor.

SECTION 9. 16.855 (22) of the statutes is amended to read:

16.855 (22) The provisions of this section, except sub. (10m), do not apply to construction work for any project that does not require the prior approval of the building commission under s. 13.48 (10) (a) if the project is constructed in accordance with policies and procedures prescribed by the building commission under s. 13.48 (29). If the estimated construction cost of any project is at least \$40,000 \$100,000, and the building commission elects to utilize the procedures prescribed under s. 13.48 (29) to construct the project, the department shall provide adequate public

1 notice of the project and the procedures to be utilized to construct the project on a
2 publicly accessible computer site.

3 **SECTION 10.** 16.87 (3) of the statutes is amended to read:

4 16.87 (3) Except as provided in sub. (4) and this subsection, a contract under
5 sub. (2) is not valid or effectual for any purpose until it is endorsed in writing and
6 approved by the secretary or the secretary's designated assistant and, if the contract
7 involves an expenditure over \$60,000, approved by the governor. The governor may
8 delegate the authority to approve any contract requiring his or her approval under
9 this subsection ~~that involves an expenditure of less than \$150,000~~ to the secretary
10 or the secretary's designee. Except as provided in sub. (4), no payment or
11 compensation for work done under any contract involving \$2,500 or more, except a
12 highway contract, may be made unless the written claim is audited and approved by
13 the secretary or the secretary's designee. Any change order to a contract requiring
14 approval under this subsection requires the prior approval by the secretary or the
15 secretary's designated assistant and, if the change order involves an expenditure
16 over \$60,000, the approval of the governor ~~or, if, unless~~ the governor delegates his
17 or her authority to approve contracts under this subsection ~~and the change order~~
18 ~~involves an expenditure of less than \$150,000, the approval of~~ to the secretary or the
19 secretary's designee.

20 **SECTION 11.** 20.867 (2) (r) of the statutes is amended to read:

21 20.867 (2) (r) *Planning and design.* As a continuing appropriation from the
22 building trust fund, any moneys allocated by the building commission for advance
23 planning and all moneys received as reimbursement for building trust fund advances
24 made for planning and design under this paragraph. The governor, ~~upon the~~
25 ~~approval of the building commission,~~ shall authorize the release of funds from this

1 appropriation for advance planning, preliminary studies and design and. The
2 building commission may transfer funds from this appropriation to other accounts
3 within the building trust fund.

4 **SECTION 12.** 20.924 (1) (intro.) of the statutes is amended to read:

5 20.924 (1) (intro.) Except as provided in sub. (3) subs. (3) and (3m), in
6 supervising and authorizing the implementation of the state building program
7 under the appropriation authority of s. 20.867, the building commission:

8 **SECTION 13.** 20.924 (1) (intro.) of the statutes, as affected by 2009 Wisconsin
9 Act (this act), is amended to read:

10 20.924 (1) (intro.) Except as provided in subs. sub. (3) and (3m), in supervising
11 and authorizing the implementation of the state building program under the
12 appropriation authority of s. 20.867, the building commission:

13 **SECTION 14.** 20.924 (3m) of the statutes is created to read:

14 20.924 (3m) Subsection (1) (a) and (b) does not apply to the design,
15 construction, repair, remodeling, or improvement of any building, structure, or
16 facility, or the acquisition of land for that purpose, if the project is funded entirely
17 with federal funds or gifts, grants, or bequests, or a combination thereof and the
18 project is approved by the joint committee on finance.

19 **SECTION 15.** 20.924 (3m) of the statutes, as created by 2009 Wisconsin Act
20 (this act), is repealed.

21 **SECTION 9301. Initial applicability; Administration.**

22 (1) STATE BUILDING CONSTRUCTION PROCEDURES. The treatment of sections 13.48
23 (19m), 16.85 (1), 16.855 (2) (intro.), (10), (13) (a), and (22), and 16.87 (3) of the statutes
24 first applies with respect to contracts and change orders for services or construction
25 work entered into on the effective date of this subsection.

SECTION 9306. Initial applicability; Building Commission.

(1) APPROVAL OF PROJECTS; CONTRACTING PROCEDURES. The treatment of section 13.48 (10) (a) and (29) of the statutes first applies with respect to contracts entered into on the effective date of this subsection.

SECTION 9406. Effective dates; Building Commission.

(1) EXEMPTION OF CERTAIN PROJECTS FROM ENUMERATION. The treatment of section 20.924 (1) (intro.) (by SECTION 13) and (3m) (by SECTION 15) of the statutes takes effect on July 1, 2011.

(END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1276/8

JTK:bjk:md

DOA:.....Thornton, BB0316 - State building construction procedures
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** state building construction procedures.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE BUILDING PROGRAM

This bill makes various changes in state building construction procedures.

Currently, with certain exceptions, no state board, agency, officer, department, commission, or body corporate may enter into a construction contract for any state building, structure, or facility if the project involves an estimated cost of more than \$150,000, without review and approval of the project by the Building Commission. This bill changes this requirement to apply only to projects having an estimated cost of more than \$250,000.

Currently, with certain exceptions, contracts for construction work on state construction projects that cost more than \$40,000 must be let by contract to the lowest responsible bidder and must be preceded by public notice and a public bidding process. Wisconsin-based bidders are accorded a preference over bidders whose home governments grant them a preference in making governmental purchases. DOA must attempt to ensure that 5 percent of the total amount expended for construction work in each fiscal year is awarded to minority-owned businesses. With certain exceptions, DOA must take separate bids on each portion of the work that DOA designates. Contractors must be granted certain progress payments while a project is underway. This bill permits the secretary of the Building Commission to waive any of these requirements for any project the cost of which is less than \$5,000,000.

Currently, with certain exceptions, contracts for work to be performed on projects that require review and approval by the Building Commission must be let by bid preceded by public notice and must be awarded to the lowest responsible bidder, and are subject to minority-owned business participation goals and certain other requirements. This bill applies these requirements only to projects having an estimated cost of \$500,000 or more.

Currently, with certain exceptions, if a project has an estimated cost of more than \$40,000, contracts for work to be performed on the project must be let by sealed bid preceded by public notice which must contain specified information and the bids must be opened publicly and must include a bid guarantee. This bill retains the requirement for letting these contracts to the lowest responsible bidder, but applies other specific bidding requirements only to a project that has an estimated cost of more than \$100,000.

Currently, when DOA believes that it is in the best interests of the state to contract for certain proprietary articles or materials available from only one source, it may contract for the articles or materials without solicitation of bids or compliance with other statutory requirements after publishing a single notice of its intention to let the contract in the official state newspaper. This bill modifies this procedure to apply to specified proprietary articles or materials regardless of whether they are obtainable from only one source, but requires solicitation of bids when the procedure is used.

Currently, with certain exceptions, a bidder on a contract for a state project need not submit with its bid a list of the subcontractors to be used on the project, but DOA may require a list of the subcontractors to be submitted before the contract is awarded. This bill permits DOA to require each bidder on a state project to submit with its bid a list of its subcontractors to be used on the project.

Currently, with certain exceptions, if a contract for a state project or a change order to such a contract involves an expenditure of more than \$60,000, the contract is subject to the governor's approval, but the governor may delegate his or her authority to approve a contract or change order involving an expenditure of less than \$150,000 to the secretary of administration or the secretary's designee. This bill permits the governor to delegate his or her authority to approve a contract or change order involving an expenditure of any amount to the secretary of administration or the secretary's designee.

Currently, with certain exceptions, DOA has the responsibility to take charge of and supervise all engineering and architectural services for state projects. This bill provides that, with certain exceptions, for the purpose of selection of an appropriate engineer or architect for each state project, DOA shall appoint one or more selection committees. The bill also requires that for each project having an estimated cost of \$5,000,000 or more, the selection committee shall interview each candidate for appointment as an engineer or architect, except that the secretary of administration or the secretary to the Building Commission may waive this requirement when he or she determines that is in the best interests of the state to do so.

Currently, the governor, upon approval of the Building Commission, must authorize expenditure of moneys for planning and design of state building projects. The governor may transfer moneys from the appropriation in the state building trust fund for planning and design to other appropriations in the building trust fund. This bill directs the Building Commission to authorize expenditure of moneys for planning and design of state building projects. The bill also permits the Building Commission to transfer moneys from the appropriation in the building trust fund for planning and design of state building projects to other appropriations in the building trust fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.48 (2) (a) of the statutes is amended to read:

2 13.48 (2) (a) There is created a building commission consisting of the governor,
3 who shall serve as chairperson, and 3 senators and 3 representatives to the assembly
4 appointed as are the members of standing committees in their respective houses.
5 The 2 major political parties shall be represented in the membership from each
6 house. One legislator from each house shall be a member of the state supported
7 programs study and advisory committee created by s. 13.47. One citizen member
8 shall be appointed by the governor to serve at the governor's pleasure. The secretary,
9 head of the engineering function, and ranking architect of the department of
10 administration shall be nonvoting advisory members. The secretary of
11 administration shall designate an employee of the department of administration to
12 serve as secretary to the building commission. The building commission shall bear
13 a title beginning with the words "State of Wisconsin". The members shall be liable
14 only for misconduct. Nonlegislator members of the building commission shall be
15 reimbursed for actual and necessary expenses, incurred as members of the building
16 commission, from the appropriation under s. 20.505.

1 **SECTION 2.** 13.48 (10) (a) of the statutes is amended to read:

2 13.48 **(10)** (a) No state board, agency, officer, department, commission or body
3 corporate may enter into a contract for the construction, reconstruction, remodeling
4 of or addition to any building, structure, or facility, in connection with any building
5 project which involves a cost in excess of ~~\$150,000~~ \$250,000 without completion of
6 final plans and arrangement for supervision of construction and prior approval by
7 the building commission. The building commission may not approve a contract for
8 the construction, reconstruction, renovation or remodeling of or an addition to a state
9 building as defined in s. 44.51 (2) unless it determines that s. 44.57 has been complied
10 with or does not apply. This section applies to the department of transportation only
11 in respect to buildings, structures and facilities to be used for administrative or
12 operating functions, including buildings, land and equipment to be used for the
13 motor vehicle emission inspection and maintenance program under s. 110.20.

14 **SECTION 3.** 13.48 (19m) of the statutes is created to read:

15 13.48 **(19m)** **WAIVER OF CONSTRUCTION PROJECT CONTRACT REQUIREMENTS.** The
16 secretary of the building commission may waive compliance with any requirement
17 under s. 16.855 for any project the estimated cost of which is less than \$5,000,000.

18 **SECTION 4.** 13.48 (29) of the statutes is amended to read:

19 13.48 **(29)** **SMALL PROJECTS.** Except as otherwise required under s. 16.855
20 (10m), the building commission may prescribe simplified policies and procedures to
21 be used in lieu of the procedures provided in s. 16.855 for any project ~~that does not~~
22 ~~require prior approval of the building commission under sub. (10) (a)~~ having an
23 estimated cost that does not exceed \$500,000.

24 **SECTION 5.** 16.85 (1) of the statutes is amended to read:

1 16.85 (1) To take charge of and supervise all engineering or architectural
2 services or construction work as defined in s. 16.87 performed by, or for, the state, or
3 any department, board, institution, commission or officer thereof, including
4 nonprofit-sharing corporations organized for the purpose of assisting the state in the
5 construction and acquisition of new buildings or improvements and additions to
6 existing buildings as contemplated under ss. 13.488, 36.09 and 36.11, except the
7 engineering, architectural and construction work of the department of
8 transportation, the engineering service performed by the department of commerce,
9 department of revenue, public service commission, department of health services
10 and other departments, boards and commissions when the service is not related to
11 the maintenance, and construction and planning of the physical properties of the
12 state. For the purpose of selection of an appropriate engineer or architect for each
13 construction project under the department's supervision, except an emergency
14 project approved under s. 16.855 (16) (b) 2., the secretary shall appoint one or more
15 selection committees. If the estimated cost of a project is \$5,000,000 or more, the
16 selection committee shall interview each candidate for appointment as an engineer
17 or architect for the project, except that the secretary of administration or the
18 secretary to the building commission may waive this requirement when he or she
19 determines that it is in the best interests of the state to do so. The department shall
20 not authorize construction work for any state office facility in the city of Madison
21 after May 11, 1990, unless the department first provides suitable space for a day care
22 center primarily for use by children of state employees.

23 **SECTION 6.** 16.855 (2) (intro.) of the statutes is amended to read:

1 16.855 (2) (intro.) Except for projects authorized under s. 16.858, whenever the
2 estimated construction cost of a project exceeds \$40,000 \$100,000, or if less and in
3 the best interest of the state, the department shall:

4 **SECTION 7.** 16.855 (10) of the statutes is amended to read:

5 16.855 (10) When the department believes that it is in the best interests of the
6 state to contract for ~~certain~~ specified proprietary articles or materials ~~available from~~
7 ~~only one source~~, it may contract for said articles or materials ~~without~~ upon
8 solicitation of bids apart from the usual statutory procedure, after a publication of
9 a class 1 notice, under ch. 985, in the official state newspaper.

10 **SECTION 8.** 16.855 (13) (a) of the statutes is amended to read:

11 16.855 (13) (a) ~~A~~ The department may require each person who submits a bid
12 to provide a list of the subcontractors ~~shall not be required to be submitted for work~~
13 to be performed with the its bid. The department may also require ~~the~~ each prime
14 contractor to submit in writing the names of prospective subcontractors for the
15 department's approval before the award of a contract to the prime contractor.

16 **SECTION 9.** 16.855 (22) of the statutes is amended to read:

17 16.855 (22) The provisions of this section, except sub. (10m), do not apply to
18 construction work for any project that does not require the prior approval of the
19 building commission under s. 13.48 (10) (a) if the project is constructed in accordance
20 with policies and procedures prescribed by the building commission under s. 13.48
21 (29). If the estimated construction cost of any project is at least \$40,000 \$100,000,
22 and the building commission elects to utilize the procedures prescribed under s.
23 13.48 (29) to construct the project, the department shall provide adequate public
24 notice of the project and the procedures to be utilized to construct the project on a
25 publicly accessible computer site.

1 **SECTION 10.** 16.87 (3) of the statutes is amended to read:

2 16.87 (3) Except as provided in sub. (4) and this subsection, a contract under
3 sub. (2) is not valid or effectual for any purpose until it is endorsed in writing and
4 approved by the secretary or the secretary's designated assistant and, if the contract
5 involves an expenditure over \$60,000, approved by the governor. The governor may
6 delegate the authority to approve any contract requiring his or her approval under
7 this subsection ~~that involves an expenditure of less than \$150,000~~ to the secretary
8 or the secretary's designee. Except as provided in sub. (4), no payment or
9 compensation for work done under any contract involving \$2,500 or more, except a
10 highway contract, may be made unless the written claim is audited and approved by
11 the secretary or the secretary's designee. Any change order to a contract requiring
12 approval under this subsection requires the prior approval by the secretary or the
13 secretary's designated assistant and, if the change order involves an expenditure
14 over \$60,000, the approval of the governor ~~or, if, unless~~ the governor delegates his
15 or her authority to approve contracts under this subsection ~~and the change order~~
16 ~~involves an expenditure of less than \$150,000, the approval of~~ to the secretary or the
17 secretary's designee.

18 **SECTION 11.** 20.867 (2) (r) of the statutes is amended to read:

19 20.867 (2) (r) *Planning and design.* As a continuing appropriation from the
20 building trust fund, any moneys allocated by the building commission for advance
21 planning and all moneys received as reimbursement for building trust fund advances
22 made for planning and design under this paragraph. ~~The governor, upon the~~
23 ~~approval of the building commission,~~ shall authorize the release of funds from this
24 appropriation for advance planning, preliminary studies and design ~~and.~~ The

1 building commission may transfer funds from this appropriation to other accounts
2 within the building trust fund.

3 **SECTION 9301. Initial applicability; Administration.**

4 (1) STATE BUILDING CONSTRUCTION PROCEDURES. The treatment of sections 13.48
5 (19m), 16.85 (1), 16.855 (2) (intro.), (10), (13) (a), and (22), and 16.87 (3) of the statutes
6 first applies with respect to contracts and change orders for services or construction
7 work entered into on the effective date of this subsection.

8 **SECTION 9306. Initial applicability; Building Commission.**

9 (1) APPROVAL OF PROJECTS; CONTRACTING PROCEDURES. The treatment of section
10 13.48 (10) (a) and (29) of the statutes first applies with respect to contracts entered
11 into on the effective date of this subsection.

12 **(END)**